



RESEARCH CONFERENCES

ESF-LiU Conference

**Violations of Human Rights and
Humanitarian Law: Investigation and
Prevention of Torture and Death in
Custody**

Chairs: Prof. Bernice Elger, University of Geneva, CH

Co-Chairs: Prof. Paola Gaeta, University of Geneva, CH &
University of Florence, IT & **Prof. Marcelo Aebi**, University of
Lausanne, CH

Scandic Hotel Linköping Väst, Linköping • Sweden
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Conference Highlights

Please provide a brief summary of the conference and its highlights in non-specialist terms (especially for highly technical subjects) for communication and publicity purposes. (ca. 400-500 words)

The conference covered the topic of human rights violations in prison, especially research on the investigation, punishment and prevention of these violations. Inadequate health care in prison, disproportionate police violence, as well as other forms of torture can lead to illness and death in custody. Torture, ill-treatment and inadequate health care of prisoners are considered violations of Article 3 (prohibition of torture and inhumane and degrading treatment) and/or Article 2 (right to life) of the European Convention for Human Rights. The European Convention for Human Rights has been ratified by all 47 members of the Council of Europe.

The conference provided a rich picture about violations of human rights and deaths in custody in different regions of the world. After an overview from Prof. A. Coyle (King's College London) on prison conditions and their consequences, invited speakers and participants showed findings from prison visits and autopsies, as well as from legal analysis as regards countries including the UK, Croatia, Serbia, Israel, Germany, Turkey, Italy, from the visits of the UN special rapporteur of torture, the International Rehabilitation Council for Torture Victims, the ICRC and the CPT. Differences between the legal and practical approaches of the different organisations provided the background for interesting discussions among the participants.

The following areas were treated: Detention conditions, health care and other causes for torture and death in custody. In this part, a special discussion took place about hunger strikes in detention centres and the different legal frameworks in Turkey and France and the different legally defined conditions that permit force feeding of detainees in these countries. In the following sections of the conference, various forensic experts treated the subject of "Death in Custody and Post-mortem investigation and prosecution". D. Pounders presented his experience as a forensic physician in several international missions which includes a case where he examined a death case that was later judged by the European Court of Human Rights (Salman vs. Turkey judgment 27 June 2000) and where the investigation of the scene of crime provided crucial evidence. This shows that thorough forensic evidence is important and can change the outcome of a court case.

The presentations included the results from an international study carried out in Geneva in joint collaboration of the Center for Legal Medicine and the Academy of International Humanitarian Law and Human Rights Law. Results from a qualitative study about reasons for deaths in custody and from the legal analysis concerning the obligation to investigate within the framework of the right to life were presented and debated vividly.

Overall, the conference provided a unique interdisciplinary opportunity for scholars from different fields such as forensic sciences, law, sociology and criminology to meet and to exchange results from their methodologically different but - as far as the subject is concerned - related fields of study on human rights violations and deaths in custody.

I hereby authorize ESF – and the conference partners to use the information contained in the above section on 'Conference Highlights' in their communication on the scheme.

Scientific Report

Executive Summary

(2 pages max)

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Scientific Content of the Conference

(1 page min.)

- *Summary of the conference sessions focusing on the scientific highlights*
- *Assessment of the results and their potential impact on future research or applications*

The conference started with a session on detention conditions, health care and other causes for death in custody, chaired by Bernice Elger, University of Geneva, CH. Prof. Andrew Coyle, Kings College London, UK gave an impressive overview pointing out the consequences of detention conditions and health care and how important it is to examine and improve these conditions in order to prevent violations of human rights and deaths in custody. He identified overcrowding as one of the main factors that lead to deterioration of health in prison. Human rights and humanitarian law considerations were shown to be of fundamental influence, since prison conditions tend to be worse in countries where prisons are seen to have a primarily punitive aspect. The punishment is extended to conditions of detention and not limited to deprivation of liberty, the latter being in line with a human rights based approach. A. Coyle defended the position that the state cannot delegate certain duties to private institutions. In the same way as a private army is not acceptable for the granting of security, it is not acceptable to delegate major tasks concerning the organization and management of prisons to private entities: “criminal justice as business becomes dangerous”.

Another highlight of the conference was the presentation of John Cullinane, Prisons and Probation Ombudsman for England and Wales who spoke about “Prison Health care and deaths in custody in England and Wales”. The ombudsman’s department counts 101 staff members and is part of the Ministry of Justice. Half of the staff deals with complaints about prisons in general whereas the other half dedicates their time to examining the problems related to deaths in custody. The aim is to create more transparency about reasons for deaths and to provide recommendations how further deaths may be prevented. The UK provides therefore unique possibilities to gather information about this difficult topic. The creation of the ombudsman’s office and duties was among others certainly motivated by the high number of deaths in custody in the UK recently, with an especially high percentage of suicides. In the discussion, questions were raised concerning the independence of the ombudsman within the hierarchical structures of the Ministry of Justice, the delays between the deaths and the possibility to obtain valid and sufficient data, as well as the lack of power of the ombudsman to enforce the about 500 recommendations concerning the preventions of deaths that his working force produces each year.

Several short oral presentations dealt with the particular issue of hunger strike related deaths and their prevention. Ertem Burcu, (with her co-author Emel Badur) from Cankaya University, Turkey, examined the way Turkish law tackles hunger strikes and showed contradictions with international conventions: “Compulsory Treatment and Forced Feeding of Convicts Under the Turkish Law –An Evaluation in the Aspect of Convention on Human Rights and Biomedicine.” Djordje Alempijevic, a forensic pathologist from the University of Belgrade, Serbia, discussed practical aspects from a forensic perspective: “Ethical and Legal Consideration of Prisoner’s Hunger Strike in Serbia - A Propos Recent Case with Fatal Outcome”, while Sophie Gromb, University of Bordeaux, France, herself responsible of health law and forensic pathology in her department discussed the existing constraints in France where the law favors a paternalistic approach: “Hunger strikers : how can doctors react ?”. Pauline Jacobs’s presentation (University of Tilburg, The Netherlands) permitted a

synthesis of the different country positions. She is currently writing her doctoral thesis on this topic (Force-Feeding of Prisoners on Hunger Strike) and developed in her presentation a well argued theoretical framework, looking at issues from different perspectives.

These sessions on possible causes for violations of human rights in prison profited from the rich and varied presentations on prison conditions from different angles, taking also into account the special problems of detained women and children. The presentations and discussions showed (1) how different scientific branches (criminology, law, forensic science, sociology, medicine) are studying the consequences of detention conditions, as well as (2) practical aspects and challenges of data gathering by NGOs. Önder Özkalıpci presented the activities of the International Rehabilitation Council for Torture Victims (Denmark) "Forensic Experts Against Torture". Bruno Aubusson de Cavarlay, CESDIP-CNRS chercheur au CESDIP, an importance research reference center in France, showed the benefits and difficulties to examine and interpret data on suicides: "Suicides in French prisons: a consequence of the prison conditions?". The perspective of scientists from Eastern Europe and Turkey was integrated not only concerning the presentations on hunger strike deaths, but also concerning prison conditions more generally: Goran Curic, University in Osijek, HR, spoke about the Croatian prison system and provided unique insights in the prison reality of his country. Elena Atzeni, University of Torino, Italy, provided a legal point of view on "Migrants, Administrative Detention and Human Rights Protection. A Critical Approach to the Italian System".

The next session was dedicated to "Torture and other violent causes of death in custody". Kurt Truebner, University Duisburg-Essen, Germany, presented a very interesting analysis on „Custody-related deaths in Essen, Germany. This study was carried out especially for the conference. In light of the immense lack of data, Trübners team tried to develop a pertinent methodology for the retrospective study of persons who died in custody and were autopsied in his department. Cristian Stan, University of Titu Maiorescu Bucharest, and Marcicic Mladen, University Josipa Jurja Strossmayera, HR ("Death in Custody, Experience from Eastern Croatia") provided the point of view of forensic practitioners who are responsible of autopsies of prisoners in East European countries. An important highlight was the presentation of Duarte Nuno Vieira, National Institute of Legal Medicine and University of Coimbra, Portugal (himself also president of the International Academy of Legal Medicine) who presented very impressively the difficulties as a forensic practitioner to examine possible torture cases in developing countries, especially in South America, where he has repeatedly accompanied the UN rapporteur on Torture on his missions. Hernan Reyes, from the International Committee of the Red Cross (ICRC, CH) provided the perspective of his own longstanding experience with the documentation of torture. He discussed pitfalls and challenges during ICRC prison visits. Several short oral presentations from young scholars enriched the picture on particular legal research aspects, such as Valeria Racemoli's presentation on "The Health Care Service's Role in the Prevention of Torture and Ill-Treatment" (Geneva Academy of International Humanitarian Law and Human Rights, CH).

While the previous session dealt with torture more generally, the following section addressed more specifically deaths in custody which, depending on the circumstances how the deaths were caused, is a particular severe violation of human rights and humanitarian law. The title of the

session was: “Death in Custody and Post-mortem investigation and prosecution (which consisted of a part I and part II) and it was chaired by Patrice Mangin, Director of the Center for Forensic Medicine in Lausanne and Geneva. In this session, Jean-Pierre Restellini, forensic scientist with many years of experience with the CPT (European Committee for the Prevention of Torture) discussed among others the challenges of investigating deaths in custody during CPT missions. Geraldine Ruiz, University of Geneva, CH presented the results of a qualitative study on reasons for deaths in custody and Eadaoin O'Brien, Irish Centre for Human Rights, IE, spoke about “Medicolegal Investigation of War Crimes: The legacy of the International Criminal Tribunal for the Former Yugoslavia. Other noteworthy presentations looked at a broader sociological and legal background. For example Awol Allo, from the University of Glasgow, UK, stimulated a lot of discussion with his hypotheses: “Unruly Defendants and Defence Counsels: Re-Contextualizing the Politicisation of Truth and Justice in Political Trials”. Patrick Mutzenberg, a lawyer working at the University of Geneva, Switzerland, summarized the “Legal Basis and Criteria of Investigating Death in Custody”. During the discussions of the challenge of investigating deaths in custody, participants of the conference agreed that the existence of international guidelines is useful to further scientific data gathering on deaths in custody. In this context, Marc Bollmann, a forensic scientist from the University of Lausanne, CH, explained details how scientifically sound, but still practicable minimal standards for the forensic investigation of deaths in custody could be developed.

In the second part of the session, the highlight was the presentation of Derrick Pounder, University of Dundee, UK: “Death in custody: case examples from the perspective of an experienced forensic experts”. He presented his experience as a forensic physician in several international missions which includes a case where he examined a death case that was later judged by the European Court of Human Rights (Salman vs. Turkey judgment 27 June 2000) and where the investigation of the scene of crime provided crucial evidence. This shows that thorough forensic evidence is important and can change the outcome of a court case. D. Pounder’s presentation was followed by the contribution of Morris Tidball-Binz, forensic pathologist at the ICRC and Isabel Hight, also from the ICRC, who examined “The role of the forensic expert for the work of the ICRC: the content of guidelines for the investigation of deaths in custody.” Several presentation from young scholars contributed research experience from other countries, such as João Pinheiro, Gabinete Medico-Legal da Figueira da Foz, from Portugal, who spoke about the “Positive interaction between human rights violation investigation and the daily forensic practice”, Harald Jung, Institute of Legal Medicine Tirgu Mures, from Romania who presented his data on “Death in custody: historical moments vs. situation in nowadays Romania”, and Irit Ballas, Hebrew University, Public Committee against Torture in Israel, Israel, whose presentation was about the data gathered in Israel on deaths and torture in custody: “Impunity Implied: The Nature of Impunity in Israel's Legal System and its Contribution to Israel's Human Rights Failures”. Finally, Clara Ines Burbano-Herrera’s presentation (Ghent University, Belgium) was a highlight in that it discussed her research on the mostly unknown “Provisional Measures in the Case Law of the European Court of Human Rights as a Mechanism of Protection to People”, which broadened the discussion and led from the subject “investigation of deaths” towards the subject of preventive measures. The day was completed by the very interesting half-day excursion to the Remand prison in Norrköping where participants had

the opportunity not only to visit the prison, but also to discuss in great detail with prison guards and the prison doctor. The discussions after all presentation were vivid. Overall, conference participants used the unique opportunity of the conference to compare their own research with the experience of scholars from different countries and different disciplines and to develop new research ideas for the future.

Forward Look

(1 page min.)

- *Assessment of the results*
- *Contribution to the future direction of the field – identification of issues in the 5-10 years & timeframe*
- *Identification of emerging topics*

The conference has confirmed that research activities about violations of human rights and humanitarian law and in particular about deaths in custody are overall scarce. One problem is the access to data. For the time being access to limited sets of data is possible for a limited number of stakeholders. First of all, forensic scientists may conduct prospective or retrospective studies in which they examine all autopsy cases that concern persons in custody. This type of study has been presented by K. Truebner from Germany and by Marcikic Mladen from Eastern Croatia. Conduction this kind of studies requires however that forensic scientists, in their own databases, are able to identify these cases. In order to obtain comparable inclusion criteria, the term custody needs to be defined clearly. A prisoner who is transferred to a hospital and dies there instead of in the prison building should still be entered in a study on deaths in custody. Results from different countries may vary because the incarceration practice of a country is different. Therefore, when interpreting the results it has to be taken into account whether particular countries reduce the number of deaths occurring directly in prison by releasing very ill prisoners or those believed to die shortly. During the preparation of the conference it had become clear that most forensic institutes have never carried out systematic studies on deaths in custody.

The first and important future initiative that was deemed important is to gather more data from forensic institutions. In order to make results from different settings and countries comparable it is important to use a commonly agreed on methodology. The most comprehensive definition would be to include all deaths that might be related to incarceration. However, this means that forensic practitioners would be required to search for any kind of dead person undergoing an autopsy whether the person had once been in prison and this information would require in general collaboration of state or judicial authorities.

During the outlook session, conference participants discussed the idea to develop a common realistic methodology for this kind of studies, if possible prospective, and a group was formed of interested scientists. The group includes Kurt Trübner (Germany), Harald Jung (Romania), G.A.P. Dellaporta (Greece), D.N. Vieira and J. Pinheiro (Portugal), Jost den Otter (Netherlands). In many countries, however, this type of studies requires authorization from the authorities, and not only from an ethics commission, and this could be a major obstacle. On the other hand, if a Europe wide research approach exists this could enhance the chances that authorities are put under some pressure to provide authorization because their refusal could become public and appear socially

undesirable.

The unique situation of the ombudsman in England and Wales implies also a unique access to data. However, this activity takes place entirely without input from academic institutions and this is one of several examples identified during the conference where collaborations between academic centers and government institutions or NGOs would be very helpful

During the outlook session, participants identified the following other research areas that merit follow up and networking between different researchers in Europe and several participants volunteered to become engaged in the coordination of future activities:

Prevention of human rights violations (Coordination: Jost den Otter and Clara Ines Burbano-Herrera); Obligation to investigate (E. O'Brien, J. Santos, Irit Ballas, E. Atzeni, V. Tsilonis, Awol Allo, considering especially the question: what is the role of NGOs?); Criteria of investigation, including independence of experts (S. Khamis); (Medico-)Legal framework concerning health care for prisoners and investigation of deaths in custody in different countries (C. Stan, Ertem Burcu, Adarsh Kumar, Harald Jung, B. Elger); UN country reports: what are the issues that people from the conference would raise concerning their countries (Clara Ines Burbano-Herrera); Health care of inmates in different countries: prevention of violations of human rights and deaths in custody (Ertem Burcu, Giselle Toledo, Jost den Otter, Dellaporta, Badur Emel); force feeding of prisoners on the European level (Pauline Jacobs, Ertem Burcu, Giselle Toledo); social science research in prisons about prison conditions, research group in Greece already existing (contact person : V. Tsilonis).

▪ Is there a need for a foresight-type initiative?

Many participants expressed during the conference that it would be very useful to repeat a similar conference in 2 to 3 years to follow up with the initiatives and contacts that have been built during the conference.

Atmosphere and Infrastructure

▪ *The reaction of the participants to the location and the organization, including networking, and any other relevant comments*

The conference atmosphere was stimulation and engaged as well as very friendly at the same time. Participants were concentrated on the content of their research related to issues of torture, death and other violations of human rights and humanitarian law in different parts of the world which favored an atmosphere of common interests and important tasks that need to be pursued. The possibility to share research results, concerns and ideas with others working in similar fields in other countries was felt to be valuable and helpful. The infrastructure of the conference contributed clearly to the good atmosphere: the room and the ESF and hotel personnel were very friendly to make participants feel at home and at ease; the room was exactly of the right size to permit good discussions. The evening in the restaurant to which many participants walked permitted reinforced contacts and discussions.

Sensitive and Confidential Information

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Date & Author:

Geneva, July 25
Bernice S. Elger, chair